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OFFICE OF PETITIONS

In re Application of :
David Hoerl :
Application No. 10/799,349 :
Filed: March 13, 2004 :
Attorney Docket No. 644-053 :

ON PETITION

This is a decision on the petition under 37 CFR 1.10(c), filed May 23, 2005, requesting that the above-identified application be accorded a filing date of March 12, 2004, rather than the presently accorded filing date of March 13, 2004. The petition was recently forwarded to this office for consideration.

Petitioners allege that the application was deposited in Express Mail service on March 12, 2004. In support, the petition is accompanied by a copy of the "United States Postal Service Track/Confirm Receipt" for Express Mail label no. ET547828495US (the same Express Mail number found on the original application papers located in the official file) showing the item was placed in USPS Express Mail service on March 12, 2004. Additionally, petitioner has also submitted a declaration from David M. Hill, Esq.

Paragraph (c) of 37 CFR 1.10 states that:

"Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit."

A grantable petition under 37 CFR 1.10(c) must include "a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit." *See* 37 CFR 1.10(c)(3).

As the required true copy of the Express Mail label showing the "date-in" has not been submitted, the petition must be dismissed. However, this decision is made without prejudice to reconsideration. Petitioner should submit a request for reconsideration that includes the required true copy of the Express Mail label showing the "date-in".

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

A handwritten signature in black ink, appearing to read 'EJ Tannouse', followed by a long horizontal line.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
Office of the Deputy Commissioner
for Patent Examination Policy